No. 545

FILED

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CHARLES ELMORE CROPLEY

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1940

LOCKE MILLER,
Petitioner,

vs.

MICHAEL J. KIRWAN,
Respondent.

PETITION FOR WRIT OF CERTIORARI

MATTHEW L. BROOM,
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Columbus, Ohio,
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PETITION FOR WRIT OF CERTIORARI

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States.

May it please the Court,

The petitioner Locke Miller, a citizen and resident of the United States and of the State of Ohio, respectfully prays the Court for a Writ of Certiorari herein to review and reverse the action and final order and judgment of the Supreme Court of Ohio herein, the Highest Court of that State in which a decision could be had, and that he may be restored to all things which he has lost thereby.

Petitioner says the number of said cause in said Court was 28235, which final order and judgment was rendered

and entered upon October 9, 1940, upon an application for rehearing of the decision, Chief Justice Carl V. Weygandt rendered September 20, 1940; which application was filed within time as provided by Rule XX of the Rules of said Court.

Petitioner herein was the Contestant therein. Respondent herein was Contestee therein.

A transcript of the Docket and Journal Entries in said cause and a certified copy of the Record thereof are filed herewith.

A: SUMMARY STATEMENT OF MATTER INVOLVED

The petitioner herein filed a petition in said Supreme Court of Ohio, under Section 4785-166 to 4785-173 inclusive General Code of Ohio setting forth:

That a primary election was held in Ohio, May 14, 1940, in which nominees were chosen for various offices including nominees for members of the Congress, or House of Representatives of the United States.

That said petitioner and respondent were the only candidates on the Democratic Ticket for the nomination for Representative in Congress for the 19th Congressional District of Ohio.

That petitioner received 4,000 more or less votes untainted with any fraud or other illegality.

That the votes of said Kirwan were contaminated by fraud and a criminal conspiracy to corrupt said primary.

That said fraudulent acts and conspiracy were a violation of Sections 208 to 213 inclusive, and Section 199, Title 18, U. S. C. A. and of Section 88, Title 18, U. S. C. A. (pp. 17, 18, 19 Appendix).

That said acts violating the sections aforesaid rendered said Kirwan ineligible as a candidate for and member of the House of Representatives of the United States.

That said fraudulent acts and conspiracy, consisted of said respondent and his agents and representatives collecting forcibly from postmasters within the 19th Con-

gressional District of Ohio, under threat of reprisal and loss of jobs, money to be used in the primary campaign and general election for said Kirwan.

That said Kirwan did secure votes by said methods and was nominated by such criminal acts.

Contestant therein prayed that said nomination may be declared null and void and that the Contestant Locke Miller may be declared the lawful and only nominee for said office.

Petitioner further represents that pursuant to said section of the General Code, he took the depositions of various witnesses supporting said claims and tending to support the same; that after taking said depositions he learned the names of other material witnesses whose testimony was indispensable to a full and complete determination of the questions involved and of the rights of the petitioner therein; that on the 19th day of August, 1940, petitioner filed a motion therein supported by affidavit (R 268) asking leave to take such additional depositions as provided by Section 4785-173 General Code of Ohio (p. 24 Appendix) and that said cause be continued until said depositions could be taken. J. 271 9.

That said cause was set down for hearing on the 30th day of August, 1940, notwithstanding the motion filed for a continuance and for leave to take such additional depositions, and was heard; that Contestant at said hearing orally requested the Court to note that to proceed with said hearing without granting Contestant the right and opportunity to take such additional depositions, would be a denial of due process of law and of the equal protection of the laws contrary to the 14th Amendment to the United States Constitution.

That said right was denied in substance and effect by the ultimate dismissal of said petition without further hearing or granting the right to take said depositions as herein related.

That said Chief Justice Weygandt not only denied said motion but he admitted to the Record after said

hearing and to the consideration of the Court, affidavits and a letter (p.——R) in violation of Section 4785-173, (p. 24 Appendix) which provides that "*all testimony shall be in the form of depositions,*" and heard said cause, and on the 26th day of September ordered said petition dismissed (p.——R).

In the application for rehearing (p.——R) which was the first and earliest time at which the question could be formally raised, petitioner specifically asserted that to dismiss said petition and deny the petitioner the Right to take such additional depositions in furtherance of justice, was a denial of due process of law and of the equal protection of the laws, and so contrary to the 5th and 14th Amendments to the Constitution of the United States.

B: QUESTION PRESENTED

The question presented is the denial and refusal of the Chief Justice Weygandt to the petitioner of the Right, before said Cause was heard, to take additional testimony material to his petition, thereby preventing petitioner from presenting all the proof available to him then, but not known or available at the time the original depositions were taken.

A denial of Due Process of Law and of the Equal Protection of the Laws, contrary to the 5th Amendment and the 14th Amendment.

C: REASONS WHY THE WRIT SHOULD BE ALLOWED

It is an indispensable element of due process of law in all cases coming under the Judicial Power of Courts that each party be given the fullest opportunity to be heard and present his evidence. And it is a flagrant violation of the 14th Amendment that the Court should deny the petitioner the due process of Section 4785-173, while granting the Respondent right to submit affidavits and a letter, without opportunity of cross-examination or rebuttal, in violation of said Section 4785-173.

Petitioner herein was denied that Right of Equal Protection of the Law.

The Petitioner herein could not get, was refused by the Court, his rights which the Law creates; the Respondent was granted privileges which the Law denies.

Therefore the decision and action of Chief Justice Weygandt who alone heard and determined said proceedings, was not in accord with the applicable decisions of this Court.

LOCKE MILLER,
Petitioner.

MATTHEW L. BIGGER,
Counsel for Petitioner.

CERTIFICATE OF GOOD FAITH

I, Locke Miller, petitioner herein, do hereby certify that the filing of this petition for a Writ of Certiorari is filed in good faith and not for purpose of delay.

LOCKE MILLER,
Petitioner.